

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

**BARBARA SCHWAB et al., individually and
on behalf of all others similarly situated,**

Plaintiffs,

v.

PHILIP MORRIS USA, INC. et al.,

Defendants.

No. CV 04-1945 (JBW)

**MEMORANDUM AND ORDER
ON DEFENDANTS' MOTION TO
EXCLUDE EXPERT TESTIMONY RE
IMPACT OF MARKETING OF "LIGHT"
CIGARETTES ON SMOKING RATES**

JACK B. WEINSTEIN, Senior District Judge:

Defendants move to exclude expert evidence regarding the impact of the marketing of "light" cigarettes on the prevalence of smoking; and to exclude expert testimony that the marketing of light cigarettes has affected smoking initiation rates (by inducing nonsmokers to being smoking) or quit rates (by inducing smokers to continue smoking in lieu of quitting). *See* Defs.' Mot. (Docket No. 518).

As part of their argument, defendants have analyzed the expert report of Dr. John Beyer regarding class-wide damages and that of Dr. Joseph Stiglitz on tobacco companies' strategy for retaining smokers in the face of growing health concerns about smoking. It is defendants' view that neither has any scientific support for his conclusion. The admissibility of experts' reports and testimony will be examined in connection with a separate memorandum and order on *Daubert* and related matters.

So far as relevance is concerned, the motion to exclude is denied. It is part of plaintiffs' theory that the marketing of "light" cigarettes through fraud artificially increased the demand for

those cigarettes; this increased demand allowed defendants to charge more than they otherwise could have for light cigarettes; and this difference in market price represents a measure of damages to the consumer. The effect of quit rates and new smokers on the market for all forms of cigarettes is relevant.

Whether there is enough evidence on the issue of the effect of "lights" on the market to go to the jury will be considered in connection with general motions to dismiss by defendants and the motion to certify as a class action by plaintiffs.

The motion is denied.

SO ORDERED.
/s/

Jack B. Weinstein

Dated: September 27, 2005
Brooklyn, New York